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Administration of justice at the United Nations

Letter dated 26 October 2017 from the President of the General Assembly to the Chair of the Fifth Committee

I have the honour to transmit herewith a letter dated 25 October 2017 from the Chair of the Sixth Committee, Burhan Gafoor, on the administration of justice at the United Nations (see annex).

(*Signed*) Miroslav **Lajčák**

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Please recycle

Annex

I have the honour to write to you with regard to agenda item 146, Administration of justice at the United Nations.

As you are aware, at its 2nd plenary meeting, on 15 September 2017, the General Assembly, upon the recommendation of the General Committee, referred the agenda item to both the Fifth and Sixth Committees. In paragraph 46 of its resolution 71/266, the Assembly invited the Sixth Committee to consider the legal aspects of the report to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters.

During the present session, the Sixth Committee considered the item at its 11th meeting, on 9 October 2017, as well as in informal consultations held on 10, 11, 17 and 19 October. The Sixth Committee considered the legal aspects of the report of the Secretary-General on the administration of justice at the United Nations (A/72/204), the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/72/138) and the report of the Internal Justice Council (A/72/210), which included, in annexes, views of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal.

During the informal consultations held on 10 and 11 October, the Executive Director of the Office of Administration of Justice, the Acting Director of the Office Ombudsman and Mediation Services and the Chair of the Internal Justice Council made presentations and remained available, along with representatives of other units of the Secretariat, to provide answers and clarifications to delegations, which were grateful for the opportunity. Delegations also had the opportunity to participate in an informal informal briefing with the Presidents of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal.

Delegations expressed their appreciation to the Secretary-General for his comprehensive report submitted pursuant to resolution 71/266 and for the report on the activities of the Office of the United Nations Ombudsman and Mediation Services. The Sixth Committee took note of the requests of the Secretary-General to the General Assembly contained in his report on the administration of justice at the United Nations (A/72/204, paras. 171 and 172). Delegations also took note with appreciation of the report of the Internal Justice Council and took note of the recommendations contained therein.

I should draw your attention to a number of specific issues related to the legal aspects of those reports, as discussed in the Sixth Committee.

Independence of the judiciary

While emphasizing the need for effective cooperation and coordination between the Fifth Committee and the Sixth Committee, the Sixth Committee once more underlined that, under paragraph 4 of its resolution 61/261, the General Assembly had decided that the new system of administration of justice should be independent, transparent, professionalized, adequately resourced and decentralized, consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike. Delegations were therefore of the view that, when considering the various proposals set out in the above-mentioned reports that might have financial implications, the Assembly should take duly into account paragraph 4 of its resolution 61/261. In this regard,

the Committee noted the report of the Internal Justice Council, in which the Council considered, among other things, in Chapter VIII, concerns about the independence and autonomy of the Tribunals. The Committee also noted the differing views of the United Nations Dispute Tribunal and United Nations Appeals Tribunal on the issue of reporting to the Assembly. Considering that independence is one of the cornerstones of the United Nations system of administration of justice, and taking into account concerns expressed this year in this regard, the Sixth Committee recommended that the Internal Justice Council be asked to provide further views in its next report to the General Assembly on possible ways to continue to ensure the independence of the Tribunals.

Knowledge of the system and outreach activities

Recalling the Sixth Committee's recommendation of 2016 (see A/C.5/71/10, annex), urging the Secretariat to strengthen and increase outreach activities, delegations welcomed the continued and intensified efforts reported by the different parts of the system of administration of justice to inform staff about available sources of legal and other advice and about the possibilities of securing legal representation in the system, including for field staff, by regular visits to peacekeeping operations and special political missions (A/72/204, paras. 78, 92, 121, 122 and 125; and A/72/138, paras. 74–84 and 103–105). The Sixth Committee also welcomed the information provided by the Secretary-General on outreach activities and emphasized the important role of those activities in ensuring universal accessibility to the system of administration of justice at the United Nations. Delegations noted that both the Office of Administration of Justice and the Internal Justice Council observed that staff still appears to have limited awareness of the system (A/72/204, para. 78; and A/72/210, paras. 12–14). The Committee thus urged the Secretariat to further strengthen and increase its outreach activities with a view to providing information on the role and functioning of the various parts of the system and the possibilities it offered to address work-related complaints, including to non-staff personnel, paying particular attention to field missions and offices.

Consolidation of rules, regulations and administrative issuances

The Committee welcomed the efforts and the work by the Office of Human Resources Management on the issue of the consolidation of rules, regulations and administrative issuances of the Organization (A/72/204, para. 93). The Committee also noted with appreciation that the Human Resources Handbook was available online on the intranet and Internet, facilitating staff access and transparency. Delegations recalled that the Interim Independent Assessment Panel on the system of administration of justice at the United Nations had made a recommendation on this issue in its report (A/71/62/Rev.1, recommendation 13), and urged the Secretariat to continue its efforts to maintain the Human Resources Handbook updated. The Committee also welcomed the plan of the Office of Human Resources Management to further raise awareness and the use of the Handbook as "the" depository of the human resources regulatory framework of the Organization.

Informal system

The Sixth Committee emphasized that the informal dispute settlement was a crucial component of the internal system of administration of justice and called for better incentives to resort to informal conflict resolution. Delegations commended the activities of the Office of the United Nations Ombudsman and Mediation Services. The Committee encouraged all parties to a work-related dispute to make every effort to settle it early on in the informal system, without prejudice to the right of each staff member to submit a complaint for review in the formal system.

Formal system

Delegations commended the work of the Management Evaluation Unit, and noted that the fact that the large majority of decisions by the Unit were eventually confirmed in whole or in part by the Tribunals was a good indicator of the sound nature of the decisions taken by the Unit. The Sixth Committee recognized the work of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal in contributing to the promotion of justice at the Organization.

Delegations noted that a relatively high number of judgments issued by the United Nations Dispute Tribunal were overturned by the United Nations Appeals Tribunal and requested further analysis of the factors that gave rise to such outcomes.

The Sixth Committee noted the recommendation of the Internal Justice Council regarding enhancing staff access to documents and information (A/72/210, para. 19). Delegations underlined that, where feasible and without compromising needed confidentiality, the Management Evaluation Unit should provide the complaining parties with documents and other information relied upon by the Unit in deciding to sustain the decisions of line managers.

The Sixth Committee further noted that the reasonable length of proceedings is an important attribute of an effective system of administration of justice. In this respect, some delegations expressed their concern with regard to the duration of the proceedings in the formal system of administration of justice.

Voluntary supplemental funding of the Office of Staff Legal Assistance

The Sixth Committee expressed gratitude for the information provided by the Secretary-General in his report (A/72/204, paras. 123 and 124 and annex IV) on the staff contributions to the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance. Delegations took note of the information provided regarding outreach activities and clinics that had been implemented in order to reduce the high opt-out rates in certain offices and entities of the Organization. Recalling the important role of the Office of Staff Legal Assistance in representing staff before the Tribunals, the Committee considered it appropriate to request the Secretary-General to continue to explore options to ensure the sustainability of the voluntary supplemental funding mechanism and to continue the outreach activities to incentivize staff not to opt out of that mechanism.

Addition of three permanent full-time judges to the Dispute Tribunal

The Sixth Committee noted that the Secretary-General recommended, as he had previously done in his report on the findings and recommendations of the Interim Independent Assessment Panel (A/71/163, paras. 126–129), the addition of three permanent full-time judges to the Dispute Tribunal and provided his reasons therefor (A/72/204, paras. 128, 139–145, 161–163 and 172 (d)), as well as the extension of the positions of supporting staff (A/72/204, para. 172 (g) and (h)). This measure was also long advocated by the Internal Justice Council (see A/70/188, paras. 70 and 71; A/70/190, para. 31; A/69/205, paras. 152–155; and A/67/98, para. 22), the judges of the Dispute and Appeals Tribunals (see A/68/306, annex II, paras. 6 and 7; see also A/67/538, annex, enclosure I, paras. 8 and 9) and the Interim Independent Assessment Panel (A/71/62/Rev.1, recommendation 47 and paras. 367–370). The Sixth Committee recalled that it had previously emphasized the need to find a long-term solution to the question of the composition of the Tribunal that would ensure the sustained efficiency of the performance of the formal system (see letters from the Chair of the Sixth Committee to the President of the General Assembly in 2012 (A/C.5/67/9, annex),

2013 (A/C.5/68/11, annex) and 2014 (A/C.5/69/10, annex)). The Sixth Committee also recalled that in previous years it had acknowledged that the extension of the positions of three ad litem judges was a necessary temporary measure aimed at ensuring the continued delivery of justice (see the letters from the Chair of the Sixth Committee to the President of the Assembly cited above and A/C.5/70/9, of 2015), and that, in 2016, it encouraged the Assembly to take the aforementioned views into consideration (A/C.5/71/10). The Committee therefore called again upon the Assembly to take such views into consideration.

Complaints by non-staff personnel

The Sixth Committee expressed gratitude for the information on non-staff personnel provided by the Secretary-General in his report (A/72/204, paras. 106–108 and annex II), at the request of the General Assembly, regarding: (a) the number of disputes brought before the system of justice and any other measures for addressing disputes available for each category of non-staff personnel and an indication of how such disputes were resolved, for the period 2009–2016; (b) the number of disputes brought before national jurisdictions and an indication of how such disputes were resolved, for the period 2009–2016; (c) the practical measures that have been taken thus far by the United Nations to ensure a proper implementation of the system and to avoid gaps, as well as any other good practices; and (d) the responses from specialized agencies and related bodies of the United Nations on the modes of dispute resolution for non-staff personnel. The Sixth Committee took note that the information provided concerns the United Nations Secretariat, funds and programmes, specialized agencies and related bodies of the United Nations. The Sixth Committee also took note of the views expressed in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services on access to the ombudsman and mediation services for non-staff personnel (A/72/138, paras. 106–108).

Delegations recalled that the Committee had repeatedly highlighted that the United Nations should ensure that effective remedies were available to all categories of personnel, including non-staff personnel (A/66/275, including annex II, "Proposal for recourse mechanisms for non-staff personnel", and A/67/265, including annex IV, "Expedited arbitration procedures for consultants and individual contractors" and annex VI, "Access to the system of administration of justice for non-staff personnel not covered under the dispute resolution mechanism and other measures available to them for addressing disputes"). The Committee further recalled the views expressed by the Interim Independent Assessment Panel (A/71/62/Rev.1, para. 413, recommendation 23 and paras. 233–243) and the Secretary-General (A/71/163, paras. 58–62), as well as the options for a remedy system for non-staff personnel elaborated by the Internal Justice Council (A/71/158, paras. 142–153 and annex I, para. 13).

Delegations received information presented orally by representatives of the Secretariat, in particular with regard to annex II of the report of the Secretary-General on the administration of justice at the United Nations (A/72/204), as well as information from the Internal Justice Council.

In light of the information provided in annex II to the report of the Secretary-General (A/72/204) and of the information presented orally by representatives of the Secretariat, delegations considered it important to have a comprehensive understanding of all remedies available, in law, and of the extent to which they are available in practice, to non-staff personnel, including arbitration concerning individual contractors. Accordingly, delegations requested the Secretary-General to prepare, with a view to informing the discussions of the General Assembly at its seventy-third session, a comprehensive analysis of the information provided in

annex II of the report (A/72/204) on the remedies available to non-staff personnel, including their effectiveness, efforts that could be taken to prevent disputes and to resolve existing ones *inter partes*, as well as the identification of good practices.

Protection against retaliation

The Sixth Committee acknowledged the ongoing efforts to strengthen and improve the policies for protection against retaliation being implemented and the new directives of the Secretary-General. The Committee took note of the view of the Internal Justice Council that staff members lodging a case before the Tribunals or appearing as witnesses continue to be insufficiently protected under the existing policies and procedures (see A/72/210, paras. 21–33), as well as of the information presented orally by representatives of the Secretariat on the issue. In the view of the Internal Justice Council, this scheme does not include the crucial protection of parties and witnesses before the Tribunals, which is essential to access to justice. Delegations recalled the recommendation of the Interim Independent Assessment Panel that the Organization establish legal provisions and corresponding procedures to protect staff members from retaliation for appearing as witnesses or for lodging an appeal (A/71/62/Rev.1, para. 413, recommendation 24). The Sixth Committee requested the Secretary-General to present, at the seventy-third session, a comprehensive analysis of existing policies on protection against retaliation in the internal justice system, including their scope, that apply to staff members who lodge cases before the Tribunals or who appear as witnesses, and to make recommendations on ways to improve protections for such staff members.

Investigations

The Sixth Committee took note of the information, provided in line with the request made in its letter to the Chair of the Fifth Committee dated 26 October 2016 (A/C.5/71/10, annex), on the improvement of investigations into misconduct and harassment and on the training provided by the Office of Internal Oversight Services to staff members on conducting peer-based investigations. The Sixth Committee also took note of the joint planning between the Office of Internal Oversight Services and the Administrative Law Section to facilitate the development and delivery of training across the Secretariat. The Sixth Committee requested that the Secretary-General also report on the measures taken to maintain the downward trajectory of the average length of time of investigations, as well as on the actions pursued by the Standing Task Force for the Improvement of the Investigation of Sexual Exploitation and Abuse (A/72/204, annex III, para. 15).

Closing remarks

The Sixth Committee recommended that the General Assembly include the item entitled "Administration of justice at the United Nations" in the provisional agenda of its seventy-third session.

It would be appreciated if the present letter were brought to the attention of the Chair of the Fifth Committee and circulated as a document of the General Assembly under agenda item 146, "Administration of justice at the United Nations".